

SECTION 11 and 12 (IRO PROVISIONS)
HEALTH CARE PATIENT BILL OF RIGHTS ACT OF 2000

9 NEW SECTION. **Sec. 11.** INDEPENDENT REVIEW OF HEALTH CARE DISPUTES.

10 (1) There is a need for a process for the fair consideration of
11 disputes relating to decisions by carriers that offer a health plan to
12 deny, modify, reduce, or terminate coverage of or payment for health
13 care services for an enrollee.

14 (2) An enrollee may seek review by a certified independent review
15 organization of a carrier's decision to deny, modify, reduce, or
16 terminate coverage of or payment for a health care service, after
17 exhausting the carrier's grievance process and receiving a decision
18 that is unfavorable to the enrollee, or after the carrier has exceeded
19 the timelines for grievances provided in section 10 of this act,
20 without good cause and without reaching a decision.

21 (3) The commissioner must establish and use a rotational registry
22 system for the assignment of a certified independent review
23 organization to each dispute. The system should be flexible enough to
24 ensure that an independent review organization has the expertise
25 necessary to review the particular medical condition or service at
26 issue in the dispute.

27 (4) Carriers must provide to the appropriate certified independent
28 review organization, not later than the third business day after the
29 date the carrier receives a request for review, a copy of:

30 (a) Any medical records of the enrollee that are relevant to the
31 review;

32 (b) Any documents used by the carrier in making the determination
33 to be reviewed by the certified independent review organization;

34 (c) Any documentation and written information submitted to the
35 carrier in support of the appeal; and

36 (d) A list of each physician or health care provider who has
37 provided care to the enrollee and who may have medical records relevant
38 to the appeal. Health information or other confidential or proprietary

1 information in the custody of a carrier may be provided to an
2 independent review organization, subject to rules adopted by the
3 commissioner.

4 (5) The medical reviewers from a certified independent review
5 organization will make determinations regarding the medical necessity
6 or appropriateness of, and the application of health plan coverage
7 provisions to, health care services for an enrollee. The medical
8 reviewers' determinations must be based upon their expert medical
9 judgment, after consideration of relevant medical, scientific, and
10 cost-effectiveness evidence, and medical standards of practice in the
11 state of Washington. Except as provided in this subsection, the
12 certified independent review organization must ensure that
13 determinations are consistent with the scope of covered benefits as
14 outlined in the medical coverage agreement. Medical reviewers may
15 override the health plan's medical necessity or appropriateness
16 standards if the standards are determined upon review to be
17 unreasonable or inconsistent with sound, evidence-based medical
18 practice.

19 (6) Once a request for an independent review determination has been
20 made, the independent review organization must proceed to a final
21 determination, unless requested otherwise by both the carrier and the
22 enrollee or the enrollee's representative.

23 (7) Carriers must timely implement the certified independent review
24 organization's determination, and must pay the certified independent
25 review organization's charges.

26 (8) When an enrollee requests independent review of a dispute under
27 this section, and the dispute involves a carrier's decision to modify,
28 reduce, or terminate an otherwise covered health service that an
29 enrollee is receiving at the time the request for review is submitted
30 and the carrier's decision is based upon a finding that the health
31 service, or level of health service, is no longer medically necessary
32 or appropriate, the carrier must continue to provide the health service
33 if requested by the enrollee until a determination is made under this
34 section. If the determination affirms the carrier's decision, the
35 enrollee may be responsible for the cost of the continued health
36 service.

37 (9) A certified independent review organization may notify the
38 office of the insurance commissioner if, based upon its review of

1 disputes under this section, it finds a pattern of substandard or
2 egregious conduct by a carrier.

3 (10)(a) The commissioner shall adopt rules to implement this
4 section after considering relevant standards adopted by national
5 managed care accreditation organizations.

6 (b) This section is not intended to supplant any existing authority
7 of the office of the insurance commissioner under this title to oversee
8 and enforce carrier compliance with applicable statutes and rules.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.70 RCW
10 to read as follows:

11 INDEPENDENT REVIEW ORGANIZATIONS. (1) The department shall adopt
12 rules providing a procedure and criteria for certifying one or more
13 organizations to perform independent review of health care disputes
14 described in section 11 of this act.

15 (2) The rules must require that the organization ensure:

16 (a) The confidentiality of medical records transmitted to an
17 independent review organization for use in independent reviews;

18 (b) That each health care provider, physician, or contract
19 specialist making review determinations for an independent review
20 organization is qualified. Physicians, other health care providers,
21 and, if applicable, contract specialists must be appropriately
22 licensed, certified, or registered as required in Washington state or
23 in at least one state with standards substantially comparable to
24 Washington state. Reviewers may be drawn from nationally recognized
25 centers of excellence, academic institutions, and recognized leading
26 practice sites. Expert medical reviewers should have substantial,
27 recent clinical experience dealing with the same or similar health
28 conditions. The organization must have demonstrated expertise and a
29 history of reviewing health care in terms of medical necessity,
30 appropriateness, and the application of other health plan coverage
31 provisions;

32 (c) That any physician, health care provider, or contract
33 specialist making a review determination in a specific review is free
34 of any actual or potential conflict of interest or bias. Neither the
35 expert reviewer, nor the independent review organization, nor any
36 officer, director, or management employee of the independent review
37 organization may have any material professional, familial, or financial
38 affiliation with any of the following: The health carrier;

1 professional associations of carriers and providers; the provider; the
2 provider's medical or practice group; the health facility at which the
3 service would be provided; the developer or manufacturer of a drug or
4 device under review; or the enrollee;

5 (d) The fairness of the procedures used by the independent review
6 organization in making the determinations;

7 (e) That each independent review organization make its
8 determination:

9 (i) Not later than the earlier of:

10 (A) The fifteenth day after the date the independent review
11 organization receives the information necessary to make the
12 determination; or

13 (B) The twentieth day after the date the independent review
14 organization receives the request that the determination be made. In
15 exceptional circumstances, when the independent review organization has
16 not obtained information necessary to make a determination, a
17 determination may be made by the twenty-fifth day after the date the
18 organization received the request for the determination; and

19 (ii) In cases of a condition that could seriously jeopardize the
20 enrollee's health or ability to regain maximum function, not later than
21 the earlier of:

22 (A) Seventy-two hours after the date the independent review
23 organization receives the information necessary to make the
24 determination; or

25 (B) The eighth day after the date the independent review
26 organization receives the request that the determination be made;

27 (f) That timely notice is provided to enrollees of the results of
28 the independent review, including the clinical basis for the
29 determination;

30 (g) That the independent review organization has a quality
31 assurance mechanism in place that ensures the timeliness and quality of
32 review and communication of determinations to enrollees and carriers,
33 and the qualifications, impartiality, and freedom from conflict of
34 interest of the organization, its staff, and expert reviewers; and

35 (h) That the independent review organization meets any other
36 reasonable requirements of the department directly related to the
37 functions the organization is to perform under this section and section
38 11 of this act.

(3) To be certified as an independent review organization under this chapter, an organization must submit to the department an application in the form required by the department. The application must include:

(a) For an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the applicant that exceed one hundred thousand dollars;

(c) The name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under (c) of this subsection and a description of any relationship the named individual has with:

(i) A carrier;

(ii) A utilization review agent;

(iii) A nonprofit or for-profit health corporation;

(iv) A health care provider;

(v) A drug or device manufacturer; or

(vi) A group representing any of the entities described by (d)(i) through (v) of this subsection;

(e) The percentage of the applicant's revenues that are anticipated to be derived from reviews conducted under section 11 of this act;

(f) A description of the areas of expertise of the health care professionals and contract specialists making review determinations for the applicant; and

(g) The procedures to be used by the independent review organization in making review determinations regarding reviews conducted under section 11 of this act.

(4) If at any time there is a material change in the information included in the application under subsection (3) of this section, the independent review organization shall submit updated information to the department.

(5) An independent review organization may not be a subsidiary of, or in any way owned or controlled by, a carrier or a trade or professional association of health care providers or carriers.

(6) An independent review organization, and individuals acting on its behalf, are immune from suit in a civil action when performing

1 functions under this act. However, this immunity does not apply to an
2 act or omission made in bad faith or that involves gross negligence.

3 (7) Independent review organizations must be free from interference
4 by state government in its functioning except as provided in subsection
5 (8) of this section.

6 (8) The rules adopted under this section shall include provisions
7 for terminating the certification of an independent review organization
8 for failure to comply with the requirements for certification. The
9 department may review the operation and performance of an independent
10 review organization in response to complaints or other concerns about
11 compliance.

12 (9) In adopting rules for this section, the department shall take
13 into consideration standards for independent review organizations
14 adopted by national accreditation organizations. The department may
15 accept national accreditation or certification by another state as
16 evidence that an organization satisfies some or all of the requirements
17 for certification by the department as an independent review
18 organization.
